

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MICHAEL D TRACY**  
Claimant

**APPEAL NO. 12A-UI-13274-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRO RESOURCES INC**  
Employer

**OC: 10/14/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 1, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 7, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ashley Green participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at Ashley Industrial Molding from June 11, 2012, to October 11, 2012.

The claimant was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when an employee is reasonably believed to be using a controlled substance, and were subject to termination if they tested positive for drugs. The employer's policy provides for an in-house drug screen, and if the screen is non-negative, the person is given the opportunity to report to medical facility to retake the test. The policy states that positive test results from a medical facility are final. If testing is done at a medical facility, the employer is responsible for paying for the test if the results are negative and the employee is responsible if the results are positive.

Pursuant to the policy, the claimant was required to submit to an in-house drug screen based on reasonable suspicion on October 11, 2012. A urine sample was taken from the claimant at the Ashley Industrial Molding's location. He was not given a list of the drugs that were being tested for. The sample was not split and was not sent for a confirmatory test by a certified laboratory. The in-house drug screen result was positive for marijuana. The claimant was verbally informed about the positive test result. He declined the opportunity to go to a medical facility for a retest. As a result, the employer discharged the claimant for violation of the drug policy.

The claimant was not notified in writing by certified mail about the results of a confirmed drug test and the right to have a split sample tested because no confirmatory test was done. He was not contacted by a medical review officer regarding the positive test result because the employer's policy does not include this procedure.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As the court in Eaton stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

The employer's drug testing was not in compliance with Iowa law in several ways. Iowa Code section 730.5-7-b requires the sample collected be split to allow a second independent confirmatory test. Section 730.5-7-c(2) requires an employer to provide to the employee a list of the drugs to be tested. Section 730.5-7-c(2) requires confirmation of any initial positive test results by a certified lab and adverse employment action can only be taken after a confirmed positive test. Section 730.5-6-b requires the employer to pay all actual costs for drug or alcohol testing of employees. Section 730.5-7-g requires that confirmed positive test result be reviewed by a medical review officer. Section 730.5-7-i provides that if a confirmed positive test result for drugs or alcohol is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of the employee's choice.

Since employer was not in compliance with Iowa's drug testing law, the claimant is not subject to a misconduct disqualification.

**DECISION:**

The unemployment insurance decision dated November 1, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css